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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,227	11/03/2003	Mark Fitchmun	FIT.003.P	5270
26990	7590	10/10/2006	EXAMINER	
DAVID B. WALLER & ASSOCIATES 5677 OBERLIN DRIVE SUITE 214 SAN DIEGO, CA 92121			CARTAGENA, MELVIN A	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SJP

Office Action Summary	Application No.	Applicant(s)
	10/701,227	FITCHMUN, MARK
	Examiner Melvin A. Cartagena	Art Unit 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 July 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-43 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-21 and 36-43 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,736,694 to Lebensfeld.

Lebensfeld shows a pressure actuated bubble blowing toy as seen in Figs. 2 and 3, having a flexible vessel 10 formed by bottom and side walls and defining an internal cavity as seen in the Figs. and having at least one aperture at the end of neck 14, means for dispensing or channel 34 connected to the aperture on the vessel, an exterior reservoir 20 provided on top of vessel 10, the vessel 10 is deformable by hand to cause liquid soap 12 to flow into the exterior reservoir through an spigot 30 and a bubble wand 26.

3. Claims 22-27, 29-32, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,418,843 to Jackman.

Jackman shows a squeeze-bottle dispenser as seen in Fig. 1, having a flexible cylindrical wall and bottom defining a vessel 1 with an internal cavity with two apertures 12 and 3, dispensing means or nozzle 7 connected to aperture 3 by a channel 2, an external reservoir 6 located on top of the vessel and retaining a quantity of liquid and having dimensions able to received a bubble wand.

With respect to the container intended to be use to hold liquid soap, see MPEP 2115:

Art Unit: 3754

"Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." In re Young, 75 F.2d *>996<, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)).

Moreover, by the doctrine of dependent claim differentiation, liquid soap cannot be part of the combination of claims 22 and 31 because the liquid soap is explicitly recited in the dependent claims 29, 30, 34 and 35.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 28, 29, 30, 33, 34 and 35 rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,418,843 to Jackman in view of US 3,736,694 to Lebensfeld.

Jackman shows all claimed features as discussed above except for the dispenser container a bubble wand and liquid soap. Lebensfeld shows a bubble blowing toy containing liquid soap and a bubble wand. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use the device of Jackman to hold a bubble wand and liquid soap for easy and convenient refilling of the reservoir with bubble forming liquid as taught by Lebensfeld.

Response to Arguments

6. Applicant's arguments filed November 07, 2003 have been fully considered but they are not persuasive. With respect to the arguments that the device of Lebensfeld and Jackman do not dispense into a user's hand, the new claim 1 recites dispensing the liquid into a users hand or alternatively into a reservoir, the device of Lebensfeld dispenses liquid soap 12 into a receiving and retaining reservoir 18 and is a combination dispenser and bubble toy, as claimed. The device of Jackman also dispenses fluid into a reservoir.

With respect to claims 29, 30, 34 and 35, the examiner is not suggesting the claims should be cancel or remove, is simply pointing out that if the depending claims specify using the dispenser for dispensing liquid soap, then the liquid dispensed by the device of the independent claim does not have to be a liquid soap.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3754

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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